

609.5.1.3 Inspection: All commercial and industrial facilities shall be subject to twice annual inspections by the Building Inspector or other agent designated by the Selectmen. The purpose of these inspections is to ensure continued compliance with the conditions under which approvals were granted. A fee for inspection shall be charged to the owner according to a fee schedule determined by the Board of Selectmen.

609.5.1.4 Location: Where the premises are partially outside of the Aquifer Protection District Overlay Zone, potential pollution sources such as on-site waste disposal systems shall be located outside the Zone to the extent feasible.

609.6 Non-Conforming Uses:

Any non-conforming use may continue and may be maintained, repaired and improved, unless such use is determined to be a hazard to public health and safety and a detriment to water quality. No non-conforming use may be expanded (except residential uses such as indicated in Section 609.4.1.6.), changed to another non-conforming use, or renewed after it has been discontinued for a period of 12 months or more.

Appendix A

Sources of Technical Data Used in Mapping The Aquifer Protection District:
1. "Groundwater Resources of the Lower Merrimack River Valley, South Central New Hampshire", Hydrologic Investigations Atlas HA-277, James M. Weigle, 1968.

610. Elderly Housing:

610.1 Authority and Purpose: It is declared to be in the public interest and for the general welfare of the Town to permit the development of housing facilities specifically suited to address the special housing needs of the elderly. The provisions of this Section are adopted pursuant to the authority of RSA 674:16 and RSA 674:21, and shall overlay and supplement the other regulations of the Town of Windham Zoning Ordinance for the purpose of establishing provisions under which elderly housing developments may be permitted by the Planning Board within certain zoning districts, and within certain areas of Windham.

610.2 Definitions: As used in this Section, the following terms shall have the meanings indicated.

610.2.1 Elderly: 55 years of age or older.

610.2.2 Elderly Housing: Any of a variety of housing types or housing units intended exclusively for use and occupancy by persons aged 55 years and older (with qualified exceptions per Section 610.6.1.1).

610.2.3 Elderly Housing Project: One (1) or more buildings situated on contiguous parcel(s) of land and containing elderly housing dwelling units.

610.2.4 Handicapped Accessible: Meeting the design requirements of the "Barrier-Free Design Code for the State of New Hampshire" and/or the Uniform Federal Accessibility Standards (UFAS).

610.2.5 Net Tract Area: Contiguous useable land excluding wetlands, land within the Wetlands and Watershed Protection District, and land with slopes greater than 25%.

610.2.6 Maximum Project Density: The total number of bedrooms that the subject site can support, based upon the development capability of the subject site and calculated in accordance with the provisions of this Section.

610.3 Location: Elderly housing as defined herein may be permitted by the Planning Board:

610.3.1 In the Rural, Residence A, Residence B, and Residence C Districts.

610.4 Minimum Lot Requirements: Parcel(s) for which Elderly Housing is proposed shall conform to the following minimum requirements, in addition to the other provisions of the Section.

610.4.1 Parcel(s) shall have a Net Tract Area of no less than four (4) acres;

610.4.2 There shall be fifty (50) feet of frontage on an existing or proposed Class V, or better, road.

610.5 Density: The total number of bedrooms that may be permitted on the subject site is intended to be roughly equal to that density achieved by applying soil type lot size requirements. The Maximum Project Density shall be calculated in accordance with the procedure outlined below:

610.5.1 Determine the number of lots allowed by soil type using the minimum lot area requirements per Appendix A-1 of the Town of Windham Zoning Ordinance. Multiply this number by eight (8) to determine the maximum number of bedrooms possible on the subject parcel.

610.6 Awarding of Density: The Planning Board may grant portions of the Maximum Project Density in accordance with the Development Standards and Development Incentives specified herein, upon the Board's determination that the applicant's proposal meets or exceeds the requirements relating to the specific density award under consideration.

610.6.1 Development Standards: Notwithstanding the other provisions of this Section, proposals meeting the following minimum development standards shall qualify for approval or fifty-percent (50%) of the Maximum Project Density calculated above:

610.6.1.1 Occupancy of each unit shall be restricted to persons fifty-five (55) years and older, with the following exceptions:

- 1) A spouse under the age of fifty-five (55) married to a resident aged fifty-five (55) or older;
- 2) An adult over the age of twenty-one (21), if their presence is required to provide medical care to a resident aged fifty-five (55) or older or to the resident's spouse;
- 3) Employees of the elderly housing project (and family members living in the same unit) who are under fifty (55) years of age, provided the employees perform substantial duties related to the management or maintenance of the project's facilities.

610.6.1.2 Allowable building types may include but are not limited to single detached, duplex, townhouse, or two (2) story garden style apartment units. Each dwelling unit shall have a minimum of 400 square feet of living space. Two-bedroom units shall have a minimum of 600 square feet of living space.

610.6.1.3 No building shall contain more than ten (10) dwelling units, except that the Planning Board may permit more than ten (10) units per building when, in the Board's sole discretion, such increase provides specific, substantial benefits consistent with the purpose and intent of this Ordinance;

610.6.1.4 Where there will be more than one (1) building on a lot, buildings shall have a minimum horizontal separation of thirty-five (35) feet. The Planning Board may require a greater separation where topography, or other unique characteristics of the site or the development will affect the use of emergency equipment between buildings;

610.6.1.5 Buildings shall be set back a minimum of fifty (50) feet from the nearest lot line;

610.6.1.6 A minimum of sixty-five (65%) of the total area of the development shall be set aside for permanent open space and/or recreational use, and shall be protected by covenants, recorded with the plans, and deed restrictions;

610.6.1.7 All units within a building shall have at-grade or elevator access;

610.6.1.8 No unit shall contain more than two (2) bedrooms;

610.6.1.9 Units may occupy two (2) floors, provided that at least one bedroom and one full bathroom must be situated on the floor containing the principal access and main living area for the unit;

610.6.1.10 All units shall be constructed to be "Adaptable" for accessibility in accordance with Section 610.2.4, above;

610.6.1.11 A minimum of one (1) parking space shall be provided for each bedroom within the proposed development. Said parking shall be provided in close proximity to the units being served;

610.6.1.12 Additional parking for visitors and guests shall be provided as required by the Planning Board, but in no event at a ratio of less than one (1) space for every two (2) dwelling units;

610.6.1.13 All other appropriate provisions of this Ordinance (including Section 704) regarding on-site parking and loading requirements shall apply.

610.6.2 Development Incentives: In addition to meeting the minimum Development Standards delineated above, an Applicant may propose and the Planning Board in its sole discretion may approve additional density awards (expressed as bedrooms) in accordance with the following Development Incentives:

610.6.2.1 Provision of Elderly Rental Units - The Planning Board may award a density bonus not to exceed twenty percent (20%) of the Maximum Project Density to an Applicant proposing to set aside and maintain for rental occupancy a minimum of twenty-five percent(25%) of the total units. In approving such an award, the Board shall determine that the covenants or other legal provisions proposed by the Applicant are sufficient to protect and preserve the continued rental occupancy of the units so dedicated;

610.6.2.2 Provision of Affordable Elderly Housing Units - The Planning Board may award a density bonus not to exceed fifty percent (50%) of the Maximum Project Density to an Applicant proposing to offer proposed units, of the type(s) permitted in this zone, in conjunction with a local, state or federal government program that is expressly designed and intended to provide and maintain affordable housing opportunities for elderly persons, as defined in the local, state or federal program objectives. Density awarded under this provision shall equal the number of bedrooms contained in the units proposed to be constructed under the local state or federal affordable elderly housing program. In no event shall the density award granted under this provision exceed the award limit of fifty percent (50%) of the Maximum Project Density, as specified above. In approving such an award, the Board shall determine that the Applicant has demonstrated that proper provisions and protections will require that the units be initially offered as, and remain, affordable;

610.6.2.3 Provision of Barrier-Free, Handicapped Accessible Design Features - The Planning Board may award a density bonus not to exceed fifteen percent (15%) of the Maximum Project Density to an Applicant proposing to construct and provide at least fifty percent (50%) of the total units as "Accessible" units in compliance with Section 610.2.4 of this ordinance, and incorporate additional significant and substantial barrier-free features and elements throughout the site's entire design. In approving such an award, the Planning Board shall consider the extent to which the location and nature of the barrier-free features contribute to and enhance the overall livability of the proposed development for elderly persons with limited mobility or other physical limitations;

610.6.2.4 Provision of On-Site Recreational and/or Common Facilities - The Planning Board may award a density bonus not to exceed fifteen percent (15%) of the Maximum Project Density to an Applicant proposing to include substantial and significant on-site recreational and/or common facilities for the use and enjoyment of project residents. In approving such an award, the Planning Board shall consider the appropriateness of the facilities for the target population; the amount, type, mix, location, quality and convenience of the proposed facilities. The Applicant shall be required to submit a Recreation Plan detailing the specific facilities to be provided - which shall include indoor, outdoor, passive, and active amenities - to aid the Board in determining whether the intent of this award has been met.

610.6.3 Nothing herein is intended to require the Planning Board to approve the maximum density award for a minimum proposal by an Applicant. Rather, the Board is encouraged to approve density awards in relation to a

proposal's qualitative and/or quantitative performance in achieving the intent of each Development Incentive.

610.6.4 In no event shall the total of all density awards approved for a given site or project exceed the Maximum Project Density as calculated under Section 610.5.1, above.

610.7 Design Standards: Any project proposed under this Elderly Housing Ordinance shall be required to conform to the requirements of the Town of Windham Site Plan Regulations.

610.8 Additional Criteria for Approval:

610.8.1 The Applicant shall be required to demonstrate the provision of significant facilities and services specifically designed to meet the physical and social needs of older persons, OR if the provision of such facilities and services is not practicable, that the proposed elderly housing is necessary to provide important housing opportunities for older persons. Consideration of "significant services and facilities" shall include, but shall not be limited to:

- 1) Programs designed to provide a social life for residents;
- 2) Continuing education programs of interest to residents;
- 3) Information and counseling services;
- 4) Recreational programs;
- 5) Homemaker services;
- 6) Services designed to assist residents with the maintenance and upkeep of the building(s) and grounds;
- 7) An accessible physical environment;
- 8) Emergency and preventative health care programs;
- 9) Congregate dining facilities;
- 10) Transportation to facilitate access to social services;
- 11) Referral Services; and
- 12) Services to encourage/assist residents to use the services and facilities available to them.

In demonstrating that significant services and facilities are provided, it is not required that all of the services listed above are being provided.

It is intended under this Section that the Applicant comply with applicable state/federal law which imposes similar requirements. To the extent that a state/federal regulatory agency concludes that the Applicant has not fully complied with this Section, the Applicant must comply with such state and federal requirements as provided in Section 610.9.2.

610.8.2 Any site on which an elderly housing project is proposed shall be reviewed with respect to the availability of retail, business, medical, and transportation services, and that the proposed construction and design of the elderly housing project shall contain the usual amenities and living aids found in housing designed for use by the elderly.

610.8.3 That the public interest will be served by the proposal to establish elderly housing on the site, and the establishment of elderly housing on the site will not cause a diminution in the property values of surrounding parcels.

610.8.4 That the topography and other characteristics of the site are suitable for the type of development being proposed, and conflicts with the character of adjacent neighborhoods will be minimal.

610.8.5 The design and layout of the development shall emphasize the rural character of the Town, maximize the privacy of the dwelling units, preserve the natural character of land, and consider such factors as orientation, energy usage, views, etc.

610.9 Other Provisions:

610.9.1 Limitation on Number of Elderly Housing Units: The Planning Board shall not accept for consideration any proposal which, if approved, would increase the total number of all elderly housing units, existing and proposed, above the number representing ten-percent (10%) of the total number of dwelling units within the Town as determined by the Tax Assessor.

610.9.2 Interpretation: To the extent that the specific requirements of this Elderly Housing Ordinance are inconsistent or at variance with any other requirements contained in the Zoning Ordinance, the requirements imposed herein shall govern and control an Elderly Housing proposal. To the extent that specific requirements imposed herein are inconsistent with or at variance with the requirements of the State of New Hampshire or the requirements of the Federal Government with respect to the operation or construction of an elderly housing project, such State or Federal requirements shall supercede the requirements of this Ordinance.

610.9.3 Legal Documents Required: The Planning Board shall require such covenants or legal restrictions that it deems necessary to insure the intent of this ordinance. The Planning Board may, as appropriate, require review and approval of any such documents by legal counsel to insure that the form and substance of such documents is sufficient to achieve and preserve the requirements of this Ordinance. The provision and review of any documents required hereunder shall be at the Applicant's expense.

610.9.3.1 Assurances of Senior Residency: The Applicant shall provide deed restrictions, use limitations, covenants, or some other legally enforceable instrument, which shall permanently restrict occupancy of the housing facilities to persons who meet all applicable restrictions regarding age. The language of the restrictions and/or limitations must be specific and must correlate with current federal and state requirements for housing for older persons under the Federal Fair Housing Act. Said assurances shall include provisions for:

- The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner(s) or manager(s) to provide housing for persons fifty-five (55) years of age or older; and
- Annual verification of compliance with the age restrictions by reliable surveys and affidavits. Notice of the results of the annual verification process is to be provided to the Code Enforcement Administrator.

610.9.3.2 Assurances Against Exportation of Water: Deed restrictions, covenants, or other reasonable assurances shall be required to insure that water extracted from any site(s) shall remain on-site.

610.9.4 Performance Guarantees Required: The Planning Board may require that a performance bond and/or such other legal assurances be submitted as are required to insure the completion of streets, buffers, amenities, or common area improvements, in accordance with the approved plans and the Subdivision and Site Plan Regulations of the Town of Windham.

611. Open Space Residential Overlay District: Developments under this ordinance would be allowed in the Residential and Rural Districts.

611.1 Authority And Purpose: This section is enacted in accordance with the provisions of RSA 674:21. The purpose of the Open Space Overlay District is to encourage flexibility in the design and development of land in order to provide for the conservation of open space, to plan for a more efficient use of Town services, and to promote the development of balanced residential communities in harmony with natural land features.

611.2 Objectives: The objectives of this Section are to:

611.2.1 Preserve open space, forests, farms, orchards and wetlands;

611.2.2 Maintain or decrease existing residential densities allowing the same or fewer homes per development;

611.2.3 Promote the more efficient use of land by requiring shorter networks of streets and utilities thus saving the town the expense of additional infrastructure;

611.2.4 Provide an organized procedure which can allow appropriate, high quality design and site planning.

611.3 Definitions: The following definitions specifically apply to this Section of the Zoning Ordinance:

Open Space Residential Development: A minimum ten (10) acre tract of single or consolidated ownership, where a number of single family structures may be grouped together with minimum lot area, frontage and yard requirements as specified in this section of the ordinance. The density of the tract as a whole shall be equal to that density achieved by using soil type lot size requirements as described in the Windham Zoning Ordinance. The remaining area in the tract, not built upon, is reserved as open space and permanently protected from further subdivision and development.

Tract: One (1) or more adjacent lots. For the purpose of this definition, lots shall be considered adjacent, notwithstanding the fact they are separated by a brook, stream, or river; a public road or right of way (except the Interstate Highway); a railroad right of way; or by a private access way. The lots shall be merged into a single lot as a condition of approval under the Open Space Residential Overlay District.

611.4 Open Space: Land that is not currently developed for residential tract development which is to be maintained in an open, non-built condition, and shall be protected by covenants recorded with the plans and deed restrictions.

Common Facilities: Land or built facilities which are commonly owned by the property owners of the development. Common facilities may be proposed, but are